

**D. FEDERAL PROVISIONS, RULES
REGULATIONS AND FORMS**

{To be used only on projects with funding from the N. H. SRF}

TABLE OF CONTENTS
FEDERAL PROVISIONS, RULES, REGULATIONS AND FORMS

Section Title	Page
FP-1 - Pertinent Federal Acts	D-2.1
Notice of Nondiscrimination in Employment	D-3.1
Federal Equal Employment Opportunity (Executive Order 11246)	D-4.1
Certification of Nonsegregated Facilities	D-4.5
MBE/WBE Requirements with Attachments A & B	D-5.1
	D-6.1
	D-6.11

FP-1 Pertinent Federal Acts

The Contractor shall comply with Executive Order 11246 and the Contract Work Hours Standards Act of August 13, 1962 (40 U.S.C. 327-330), and any amendments or modifications thereto, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto.

A legible copy of the "Notice to Labor Unions or Other Organizations of Workers" must be posted and maintained by the Contractor in a prominent place on the site where it can be easily seen by the employees.

Each employee must be paid weekly and in accordance with the overtime compensation and fringe benefits requirements.

Any questions regarding the requirements and implementation of the labor standards should be addressed to the attention of the Department of Environmental Services, Wastewater Engineering Bureau, 6 Hazen Drive, P. O. Box 95, Concord, N. H. 03301.

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

To: _____
(Name of union or organization of workers)

The undersigned currently holds contract(s) with _____
(Name of Applicant)

_____ involving funds or credit of the U.S. Government or (a) subcontract(s)
with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order 11246, dated September 24, 1965, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION
RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOY-
MENT TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS
OF COMPENSATION, SELECTION FOR TRAINING INCLUDING
APPRENTICESHIP, LAYOFF, OR TERMINATION.

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 11246.

COPIES OF THIS NOTICE WILL BE POSTED BY THE UNDERSIGNED IN CONSPICUOUS
PLACES AVAILABLE TO EMPLOYEES OR APPLICANTS FOR EMPLOYMENT.

C/S/

(Contractor or Subcontractor)

Date

Standard Federal Equal Employment Opportunity
Construction Contract Specifications
(Executive Order 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or Subcontractor's

failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The Goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization responses.

D-4.3

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligation.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to an discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings,

D-4.4

screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to insure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF WATER PROGRAMS OPERATIONS

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he had obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

Signature

Date

Name and Title of Signer (Please Type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C.. 1001.

INTERIM GUIDANCE FOR MINORITY BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE REQUIREMENT OF 40 CFR 33.240

I. Purpose

This interim guidance is for Regions to assist States, EPA assistance recipients, prime contractors, consultants, minority business owners and women's business owners in complying with EPA's Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) requirements in the Agency's procurement regulations, 40 C.F.R. Part 33. This guidance provides suggestions for carrying out the affirmative steps required by Office of Management and Budget Circular A-012, Attachment O, section 9 and included in EPA procurement regulations. Also included is a description of activities to be undertaken by EPA or delegated STATES, as well as suggestions for MBE/WBEs to take in pursuing opportunities for work in EPA-funded projects.

II. Definitions

A. Minority Business Enterprise (MBE) [same as definition to be in final 40 C.F.R. 33.005] A minority business enterprise is a business which is

1. certified as a minority business enterprise by a State or Federal agency; or
2. an independent business concern which is at least 51 percent owned and controlled (as defined below) by minority group member(s). A minority group member is an individual who is a citizen of the United STATES and one of the following:

a. Black American

b. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America)

c. Native American (American Indian, Eskimo, Aleut, native Hawaiian)

d. Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent)

B. Women's Business Enterprise (WBE) [same as definition to be in final 40 C.F.R. 33.005]: A women's business enterprise is a business which is

1. certified as such by a State or Federal agency; or
2. an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community property state will not be disqualified because her husband had a 50 percent interest in her share. Similarly, a business owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

C. Ownership and Control.

1. The minority or woman ownership's interest in the firm must be real, substantial and continuing. Such interest may include:
 - a. risk of loss/share of profit commensurate with the proportional ownership; and
 - b. receipt of the customary incidents of ownership, such as salary and/or intangible benefits.
2. A minority or woman owner must have and exercise the authority to independently control the business. The minority or woman owner need not be continually present to be deemed in control. Characteristics of control may include:
 - a. authority to sign bids and contracts;
 - b. making decisions to price negotiations;
 - c. incurring liabilities for the firm;
 - d. making final staffing decisions;
 - e. policy-making; and
 - f. making general company management decisions.
3. Only those firms performing a useful business function according to custom and practice in the industry are qualified as MBE's or WBE's. Acting merely as a passive conduit of funds to some other, non-minority firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry."

D. Recipient - A party receiving federal financial assistance under an EPA program pursuant to the STATE Revolving Loan Fund program (SRF)

E. Project - The scope of work for which a State loan is awarded.

F. Bidder - A party seeking to obtain a contract with a recipient through a competitive, advertised, sealed bid process.

G. Offeror - A party seeking to obtain a contract with a recipient through a negotiated procurement process.

IV. EPA Responsibilities.

A. Headquarters

1. The office in charge of the assistance program (program office) has primary responsibility for implementation of the MBE/WBE program relative to the State Revolving Fund Program, in cooperation with the Office of Small and Disadvantaged Business Utilization (OSDBU).
2. OSDBU is responsible for serving as the Federal focal point for inquiries on the MBE/WBE program, providing an explanation of the program and guidance to MBE's and WBE's interested in working on State Revolving Fund projects.

B. Regional Responsibilities.

1. Provide guidance and advice to recipients as requested.
2. Maintain lists of those MBE and WBE firms which have participated in EPA funded projects. The Region may also add MBEs and WBEs requesting to be included on source lists. Such lists are for information purposes only, and shall carry a clear and prominent statement that the firms listed are neither endorsed nor guaranteed by EPA as bona fide MBE/WBEs. It is not necessary to be on any list in order to qualify as a bona fide MBE/WBE.
3. Monitor recipients for compliance with MBE/WBE requirements and for determining levels of MBE/WBE participation.

V. Recipient Responsibilities

- A. The recipient shall take affirmative steps to contract with MBEs and WBEs and to insure that its contractors and consultants take affirmative steps to contract with MBEs and WBEs during all phases of work funded or to be funded under a SRF Loan agreement. The recipient's affirmative steps as defined in EPA procurement regulations are the following:
 1. When feasible, dividing the total work to be contracted into smaller tasks in the solicitation documents to permit maximum MBE/WBE participation.
 2. Including qualified MBEs and WBEs on solicitation lists by drawing from the source lists of the DES and appropriate minority/women's business associations and agencies.
 3. Assuring that MBEs and WBEs are solicited whenever they are potential sources of services and supplies, for example, by:
 - a. Holding pre-bid conferences, with interested MBEs and WBEs in attendance when possible, to highlight the requirements of this program to prospective bidders;
 - b. Including this MBE/WBE interim guidance in requests for proposals (RFP) and invitations for bids (IFB);
 - c. Publishing announcements of MBE/WBE opportunities for work on SRF projects.
 - d. Developing a source list of MBE/WBEs and providing its list to prospective bidders/offerors;

D-6.4

(1)The recipient may wish to engage an MBE/WBE liaison to compile the list.

(2)The recipient may wish to use available lists such as those of the NHDES, adjacent municipalities , appropriate minority/women associations and agencies, and available industry associations. Names of these agencies with address and phone number should also be included on the recipient's source list.

e. providing necessary and appropriate liaison services between MBE/WBEs and prospective bidders/offers. (Liaison services should not be delegated to consultants where a potential for conflict of interest exists.)

4. When project requirements permit, establishing delivery schedules which encourage participation of MBE/WBEs.
 5. Using the services and assistance of the Small Business Administration (SBA), the Minority Business Development Agency (MBDA), and other federal, State and local agencies when appropriate.
- B. Unless otherwise provided in the specifications, compliance with the MBE/WBE requirements in the regulations is a matter of bidder/offeror responsibility.
- C. The recipient is responsible for monitoring work in progress to insure that MBE and WBE subcontractors and joint ventures are actually participating in the performance of the subcontract or joint venture contract and to insure that the consultant/contractor is fulfilling its obligations with respect to MBE/WBE requirements under the contract.
- D. As part of the documentation required under 40 C.F.R. 33.250, the recipient shall maintain and update records of MBE/WBE participation and supply data to the REGION or delegated NHDES when requested. Such records may include:
1. Name of MBE/WBEs being utilized;
 2. Work designated to be performed by MBE/WBE;
 3. Dollar value of that work.
 4. Portion or project being performed by MBEs and WBEs.

VI. Bidder and Offeror Responsibilities

- A. Affirmative Steps: Activities during preparation of bids and offers. Bidders/offers shall take affirmative steps in compliance with the regulations prior to submission of bids or closing date for receipt of initial offers, to encourage participation in projects by MBEs and WBEs. Such efforts include:

D-6.5

1. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation.
 2. Assuring that MBEs and WBEs are solicited whenever they are potential sources of goods or services. This step may include:
 - a. Sending letters or making other personal contacts with MBEs and WBEs, (e.g. those whose names appear on lists prepared by DES and EPA or the recipient and other MBE/WBE known to the bidder/offeror). MBEs and WBEs should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
 - (1) Specific description of that work to be subcontracted;
 - (2) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - (3) Date the quotation is due to the bidder/offeror;
 - (4) Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.
 - b. Sending letters or making other personal contacts with local, STATE, FEDERAL and private agencies and MBE/WBE associations relevant to the project. Such contacts should provide the same information provided in the direct contacts to MBE and WBE firms.
 3. Where feasible, establishing delivery schedules which will encourage participation by MBEs and WBEs.
- B. Bidders/offerors must demonstrate compliance with MBE/WBE requirements in order to be deemed responsible. Demonstration of compliance may include the following information, however, the recipient may specify other methods of demonstrating compliance:
1. Names, addresses and phone numbers of MBE/WBEs expected to perform work;
 2. Work to be performed by the MBEs and WBEs;
 3. Aggregate dollar amount of work to be performed by MBEs and WBEs, showing aggregate to MBEs and aggregate to WBEs separately;
 4. Description of contacts to MBE and WBE organizations, agencies and associations which service MBEs/WBEs, including names of organizations, agencies and associations and dates of contacts;
 5. Description of contacts to MBEs and WBEs, including number of contacts, fields, (i.e., equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

- C. Successful bidders/offerors should take reasonable affirmative steps to subcontract with MBEs and WBEs whenever additional subcontracting opportunities arise during the performance of the contract.

VII. MBE and WBE Responsibilities

MBEs and WBEs are responsible for promoting themselves and taking the initiative to obtain contracts and subcontracts and for encouraging joint venture arrangements. MBEs/WBEs interested in working on SRF projects are strongly encouraged to take the following steps:

- A. Submit information to the recipients to identify status as a MBE/WBE.
- B. Become certified as MBE/WBE under available STATE or FEDERAL agency procedures.
- C. Contact federal, STATE, and local MBE/WBE liaison offices to obtain information on potential jobs.
- D. Provide capability statements to STATE agencies, recipients, consulting engineers, and contractors, stating type(s) of work performed by the firm, size of job that the firm could handle, bonding information, and any special skills.
- E. Make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.
- F. Contact NHDES to obtain information on planned SRF projects.
- G. Respond promptly to solicitation requests.

VIII. Remedies for Noncompliance

- A. Protests. A bidder/offeror for SRF funded work or MBE/WBE with an adversely affected direct financial interest may file a bid protest with the recipient pursuant to DES procurement regulations. These procedures are available to protest alleged violation of federal MBE/WBE requirements and may not be used to enforce local or STATE MBE/WBE requirements.
- B. Upon a finding by DES that a recipient, bidder/offeror, consultant, contractor or subcontractor has not complied with the MBE/WBE requirements of EPA regulations, DES may invoke any and all sanctions and remedies specified in EPA regulations.

IX. State or Local Law

Nothing in this program prevents a STATE or recipient from applying more stringent MBE/WBE requirements or procurement obligations which pertain to bid responsiveness or percentage of MBE and WBE participation.

APPENDIX 1

ATTACHMENT A

THE MBE GOAL HAVING BEEN MET, the following information **must be submitted within 15 days after bid opening**:

MUNICIPALITY: _____ STATE: _____

NH DES PROJECT NO: _____ CONTRACT NO: _____

1. Total dollar amount of the contract:
2. Total dollar amount of MBE participation:
3. Percentage of MBE participation:
4. List of MBE Subcontractors (fill out for each MBE used):

NAME: _____ PRINCIPAL CONTACT: _____

ADDRESS: _____

WORK TO BE PERFORMED: _____

AMOUNT OF SUBCONTRACT: _____

This Attachment must be signed by an authorized representative of the Offeror.

(Signature)

Name: _____

Title: _____

Address: _____

Phone: _____

APPENDIX I

ATTACHMENT B

THE MBE GOAL NOT HAVING BEEN MET, the following information **must be submitted within 15 days after bid opening**:

MUNICIPALITY: _____ STATE: _____

NH DES PROJECT NO: _____ CONTRACT NO: _____

1. Announcement: List each publication directed at minorities in which offeror placed an announcement or notification.

NOTE: A copy of each announcement from each publication must be attached.

Name of Publication: _____

Address: _____

Dates of Announcement: _____

Target Audience: _____

Geographic Distribution: _____

Specific Subcontract Announced: _____

Estimate of Approximate Dollar Value of Subcontract Announced: _____

APPENDIX II

ATTACHMENT A

THE WBE GOAL HAVING BEEN MET, the following information **must be submitted within 15 days after bid opening**:

MUNICIPALITY: _____ STATE: _____

NH DES PROJECT NO: _____ CONTRACT NO: _____

1. Total dollar amount of the contract:
2. Total dollar amount of WBE participation:
3. Percentage of WBE participation:
4. List of WBE Subcontractors (fill out for each WBE used):

NAME: _____ PRINCIPAL CONTACT: _____

ADDRESS: _____

WORK TO BE PERFORMED: _____

AMOUNT OF SUBCONTRACT: _____

This Attachment must be signed by an authorized representative of the Offeror.

(Signature)

Name: _____

Title: _____

Address: _____

Phone: _____

APPENDIX II

ATTACHMENT B

THE WBE GOAL NOT HAVING BEEN MET, the following information **must be submitted within 15 days after bid opening**:

MUNICIPALITY: _____ STATE: _____

NH DES PROJECT NO: _____ CONTRACT NO: _____

1. WBE Solicitation

List each WBE firm (whether or not on the Grantee's Project Source List) to which a letter of solicitation was sent. It is suggested that correspondence be sent by certified or registered mail since the burden of proof of positive efforts to utilize WBE firms rests with the bidder.

A sample copy of each different solicitation letter MUST be attached.

(1) Company Name: _____

Address: _____

Phone: _____

Area of WBE Expertise: _____

Contact Person: _____

Date of Initial Contact: _____

2. List of WBE Firms to be used

(a) Company Name: _____

Principal Contact: _____

Address: _____

Phone: _____

Type of Subcontract: _____

Amount of Contract: _____

3. List all MBE/WBE firms from which a bid or quotation was received and which is not listed as a Subcontractor in Part 4 of this Attachment.

(a) Company Name: _____

If not Listed Under 3 Above: _____

Address: _____

Phone: _____

Contact Person: _____

Type of Subcontract Bid: _____

Amount of Bid: _____

(b) Successful Subcontractor: _____

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Amount of Bid: _____

Is Scope of Work Same as in MBE/WBE Bid? _____

If Not, Describe Differences: _____

(c) Dates of Negotiation Meeting: _____

Place: _____

Attendees: _____

(d) Why Was the MBE/WBE Firm Not Selected? _____